THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.23960 of 2007

Dated 24-04-2007

Between:

P.Venkatrathnam

…Petitioner

And

The A.P. Housing Board and others

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.23960 of 2007

ORDER:

A Flat, bearing No.303 in Block No.AB-10 of Singapore Class Township at Pocharam, Hyderabad, was initially allotted to one D.Lakshmi Narayana for a total sum of Rs.9,00,000/-. Even before the total payment could be made, the original allottee requested the A.P. Housing Board, the 1st respondent, to transfer the allotment in favour of the petitioner, by filing an application dated 05-12-2002. The request was acceded to, by proceedings dated 07-12-2002; by the 1st respondent. The schedule of payment of installments was also indicated therein. The petitioner could not pay some installments within the stipulated time. The 2nd respondent issued letter dated 13-09-2005, requiring the petitioner to pay the balance amount on or before 30-09-2005. It was pointed out that, in default, the allotment would be cancelled, and 10% of the cost of the flat would be forfeited. Petitioner states that on account of his ill-health, he could not make the payment by 30-09-2005, but cleared all the amounts, almost within one month thereafter, i.e. by 05-11-2005. Reference is made to the demand drafts of the various dates, before that date.

The Executive Engineer, Central Division of the A.P. Housing Board, the 2nd respondent herein, addressed a letter dated 17-01-2006, requiring the petitioner to pay a sum of Rs.59,268/-

towards interest on belated payment; Rs.5,000/- towards maintenance fund, and Rs.90,000/- towards restoration of the allotment. The same is challenged in this writ petition.

The respondents filed a counter affidavit and material papers, in support of their action. It is stated that the petitioner did not avail the extended benefit, and instead of forfeiting 10% of the cost of the flat, they have extended further benefit to the petitioner through the impugned order.

Heard the learned counsel for the petitioner and learned Standing Counsel for the A.P. Housing Board.

According to the original schedule, last installment, constituting 10% of the cost was to be paid, at the time of delivery of possession of the flat. The construction was scheduled to be completed by 31-12-2004. Therefore, the original schedule got disturbed to certain extent, from the point of view of the petitioner as well as the respondents. It was in this context, that the respondents extended the time, for payment of the balance, up to 30-09-2005. It is also made clear that the allotment would stand cancelled, in case of default.

The petitioner admitted that he did not pay the balance by 30-09-2005, on account of his ill-health. Notwithstanding the genuinity of the reasons pleaded by him, if no developments have taken place, after 30-09-2005, no exception can be taken for the action proposed by the respondents through the impugned proceedings. Cancellation of allotment was no doubt, automatic, but once the respondents have received the balance of the amount up to 05-11-2005, different things emerge. The respondents have tacitly agreed to receive the amount,

may be subject to the right to levy interest, for the belated payment. There is certainly justification for levy of Rs.59,268/- for delayed payment, and payment of Rs.5,000/- towards difference of maintenance fund. However, the payment of Rs.90,000/- towards restoration of the allotment cannot be sustained.

Though, not identical, but in similar situation, arising in W.P.No.8653 of 2005, this Court directed the A.P Housing Board to complete the allotment and register the flat, on payment of Rs.25,000/- by the allottee.

Hence, the writ petition is allowed, and the impugned order, in so far as it demands a sum of Rs.90,000/- from the petitioner, towards restoration charges, is set aside. In addition to the amount towards interest, for belated payment, and Rs.5,000/- towards difference of maintenance fund, the petitioner shall be liable to pay a sum of Rs.25,000/- (twenty five thousand), to complete the sale in his favour. If the amounts, referred to above, are paid within four weeks from today, the respondents shall complete the formalities, and shall execute the sale deed; and deliver possession of the flat to the petitioner.

There shall be no order as to costs.

L. NARASIMHAR EDDY, J.

Dt.24-04-2007.

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